IN THE UNITED STATES DISTRICT COUR FOR THE NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

NORTHERN DISTRICT OF ILLAS FILED CLERK, U.S. DISTRICT COURT Deputy

ALLSTATE INSURANCE COMPANY, et al.

Plaintiffs/Petitioners,

RECEIVABLE FINANCE COMPANY, et al.,

Defendants/Respondents.

Civil Action No. 3-01-CV2247-N

AFFIDAVIT OF MICHAEL E. MEARS, ESO.

STATE OF TEXAS

§ §

COUNTY OF DALLAS

BEFORE ME, the undersigned authority, personally appeared MICHAEL E. MEARS, who having been duly sworn, deposes and states as follows:

- 1. I am an attorney associated with the law firm of Andrews Kurth LLP, and practice law on a regular basis in the state of Texas. I have been so licensed and have practiced in Texas since December of 1987. Prior to that, I practiced law in the State of Ohio for approximately 10 years. I am also licensed to practice law in the United States District Court for the Northern District of Texas. I have personal knowledge of, and am otherwise competent to testify to, all the matters hereinafter stated.
- Andrews Kurth has been retained by Accident & Injury Pain Centers, Inc. and 2. Receivable Finance, LLC. I am the attorney from Andrews Kurth LLP primarily responsible for this matter. This affidavit is given in support of Defendants' Motion to Exclude Expert Witness.

DAL:510543.1

- 3. Attached as Exhibit C to the Appendix to Defendants' Motion Exclude Expert Witness are true and correct copies of pages from two Business Records Affidavits of Custodian for Texas Board of Chiropractic Examiners dated June 3, 2004 and June 14, 2004. The originals of these business records affidavits and all documents attached thereto are filed with the papers of the Court on June 21, 2004. True and correct copes of those affidavits (with only the attachments relevant to this Motion) are attached to this Affidavit.
- 17. Attached as Exhibit F to the Appendix Under Seal to Motion to Exclude Expert Witness are true and correct copies of pages excerpted from the deposition of Edward Joseph Moran, which I attended on May 4, 2004. The testimony set forth in the transcript is the testimony given by Mr. Moran at the time of his deposition.

FURTHER AFFIANT SAYETH NOT.

SWORN TO AND SUBSCRIBED before me this

LINDA WEST Notary Public State of Texas **Commission Expires** MARCH 3, 2007

Notary Public in and for Dallas County, Texas

[SEAL]

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

ALLSTATE INSURANCE COMPANY, et al., § Plaintiffs/Petitioners, 8088888 v.

Civil Action No. 3-01-CV2247-N

RECEIVABLE FINANCE COMPANY, et al.,

Defendants/Respondents.

BUSINESS RECORDS AFFIDAVIT OF CUSTODIAN FOR THE TEXAS BOARD OF CHIROPRACTIC EXAMINERS

BEFORE ME, the undersigned authority, personally appeared Sandra Smith, who being by me duly sworn, deposed as follows:

- 1. "My name is Sandra Smith. I am of sound mind, capable of making this Affidavit, and I have not been convicted of a crime. I am over the age of eighteen (18) years. I have personal knowledge of the facts herein stated and they are true and correct.
- 2. I am the Custodian of Records for the Texas Board of Chiropractic Examiners (the "TBCE"), 333 Guadalupe, Suite 3-825, Austin, Texas 78701-3942. Attached hereto are two (2) pages of records for the TBCE (a copy of a Progress Report and Transcript numbered TBCE0074, and a better copy of the left margin of that document, which is not numbered). The said two (2) pages of records are kept by the TBCE in the regular course of business of the TBCE, and it was the regular course of business of the TBCE for an employee or representative of the TBCE, with knowledge of the act, event, condition, opinion or diagnosis recorded to make the record or transmit information thereof to be included in such record; and the record was made

at or near the time reasonably soon thereafter. The records attached hereto are exact duplicates of the original records.

Further, affiant sayeth not.

SANDRA SMITH

Printed Name

SUBSCRIBED AND SWORN TO BEFORE ME, to certify which witness my hand and seal of office, on this ______ day of June, 2004.



For and In the State of Texas

My Commission Expires:c

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PROGRESS REPORT & TRANSCRIPT

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legree D. C. (Graduated 6-4-64 Total Hours	4,3	08				Anatomy 881	Brain & Cord
	FIRST YEAR						Pathology 331	Vascular Diseases
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Physiology 111	Circulation & Respiration	1-2	2-60	31		Ek.	Radiology 231	Interpretation
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/Technique 113	Athletic Injuries	7-	15-60	86	27	Ek.	Technique 641	General Technique
Physiology 313	Genito Urinary	7-	15-60	90	18	Ek.	Diagnosis 741	Pediatrics
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Chiropractic 313	Special Anatomy & Physiology of Spine	· 7-:	15 <u>-60</u>	83	45	WDH	/Physiology 642	Obstetrics & Gynecology
Technique 213	Palpation & Nerve Tracing	7-	5-60	95	27	F.B.	Chiropractic 742	Jurisprudence
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	SECOND YEAR				,		Diagnosis 842	Vascular, Genito & Urinar
Diagnosis 121L	History Taking & Physical Examination			70	90	G.L.	Diagnosis 942	Disease of the Eye
Pathology 121L	Laboratory /		7-61	83	54	F.B.	Technique 842	General Technique
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Anatomy 722	Embryology		27-60		90		Phys. 211	Digestion & Metabo
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IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

ALLSTATE INSURANCE COMPANY, et al.,

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V.

Civil Action No. 3-01-CV2247-N

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Defendants/Respondents.

BUSINESS RECORDS AFFIDAVIT OF CUSTODIAN FOR THE TEXAS BOARD OF CHIROPRACTIC EXAMINERS

BEFORE ME, the undersigned authority, personally appeared Sandra Smith, who being by me duly sworn, deposed as follows:

- 1. "My name is Sandra Smith. I am of sound mind, capable of making this Affidavit, and I have not been convicted of a crime. I am over the age of eighteen (18) years. I have personal knowledge of the facts herein stated and they are true and correct.
- 2. I am the Custodian of Records for the Texas Board of Chiropractic Examiners (the "TBCE"), 333 Guadalupe, Suite 3-825, Austin, Texas 78701-3942. Attached hereto are 192 pages of records for the TBCE (a December 19, 2003 letter from the TBCE to Linda West, Andrews Kurth LLP and a December 19, 2003 letter from the TBCE to Bill Timberlake, D.C., plus 190 pages which have been numbered "TBCE 0001 Timberlake" to "TBCE 190 Timberlake"). The said 192 pages of records are kept by the TBCE in the regular course of business of the TBCE, and it was the regular course of business of the TBCE for an employee or representative of the TBCE, with knowledge of the act, event, condition, opinion or diagnosis recorded to make the record or transmit information thereof to be included in such record; and the record was made

at or near the time reasonably soon thereafter. The records attached hereto are exact duplicates of the original records.

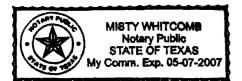
Further, affiant sayeth not.

SANDRA SMITH

- habitand

Printed Name

SUBSCRIBED AND SWORN TO BEFORE ME, to certify which witness my hand and seal of office, on this ______ day of June, 2004.



Notary Public

For and In the State of Texas

My Commission Expires:

TEXAS SECONDARY SCHOOL RECORD

TIMBERLAKE	BILL	WAYN	E		Check	one:
Last Name of Applicant	First Name	Mid	dle Name		Fen	nale
Birth Date May 2, 19	139				[X]Mal	e
Month Day		Applic	ant's Address			
M. P. Timberlake						
Parent's Name			1	Parent's Address		
High School Reporting Ge	inesville High	Schoo	1 Address _	201 Lindsay:	Gaines	ville
Did applicant graduate fro	om your high school?	Ye	s When? Ma	31, 1957		
In what quarter did applic	ant rank? Fourt	h	Number of	students in class.	120	· · · · · · · · · · · · · · · · · · ·
Attendance at last high s	chool other than your	s		When		
Significant honors and ac	tivities (limit to 3 or	4)				
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Accrediting associations	or agencies of which	this high	school is a mem	ber		
TEXAS EDUCATION	AGENCY					
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Remarks:						
						
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Case 3:01-cv-02247-N Document 477 Filed 06/21/04 Page 10 of 15 Page ID 3756

NAME Timberlake	11	<u> </u>	Wayne	Date tr.	ript sent May 26, 1964
Last Name of Applicant	Fire	t Name	Middle Name		

GRADING SCALE: Highest passing grade 100, Lowest passing grade 55*, Failing 64 & below *Indicates accelerated, honors classes or special classes for the gifted. *70 for college recommend.

specific subjects							
irst Year 19 <u>53</u> -19 <u>54</u>	Grad 1 st Semester	2 nd	Units for Graduation	Second Year 19 <u>5</u> 4-1955	Grad lst Semester		
English I	68	70	1	English II	67	66	1
General Math	86	70	1	Algebra I	79	69	11
General Science	67	74	1 .	World History	79	77	
Wood Shop	88	86	1	Athletics	Cr.	Cr.	1
Athletics	93	93	1 2	Mech. Drawing I	84	84	11
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English II1	77	74	1	English IV	73	69	1
rebra II	79		<u>1</u>	Com. Arithmetic		74	호
_10logy	83	74	11	Chemistry	66	65	11
American History	85	87	11	Wood Shop II	90	80	1
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				Phys. Ed.	Cr.	Cr.	1

Use space below for summer work and fifth year. For summer work or correspondence, give actual hours of class and laboratory attendance-not long session equivalents.

Session	Subject	No. Weeks	Grade	Units Earned	Fifth Year	Grades 1st 2nd Sem. Sem	

For Use	of Re	gi e trar
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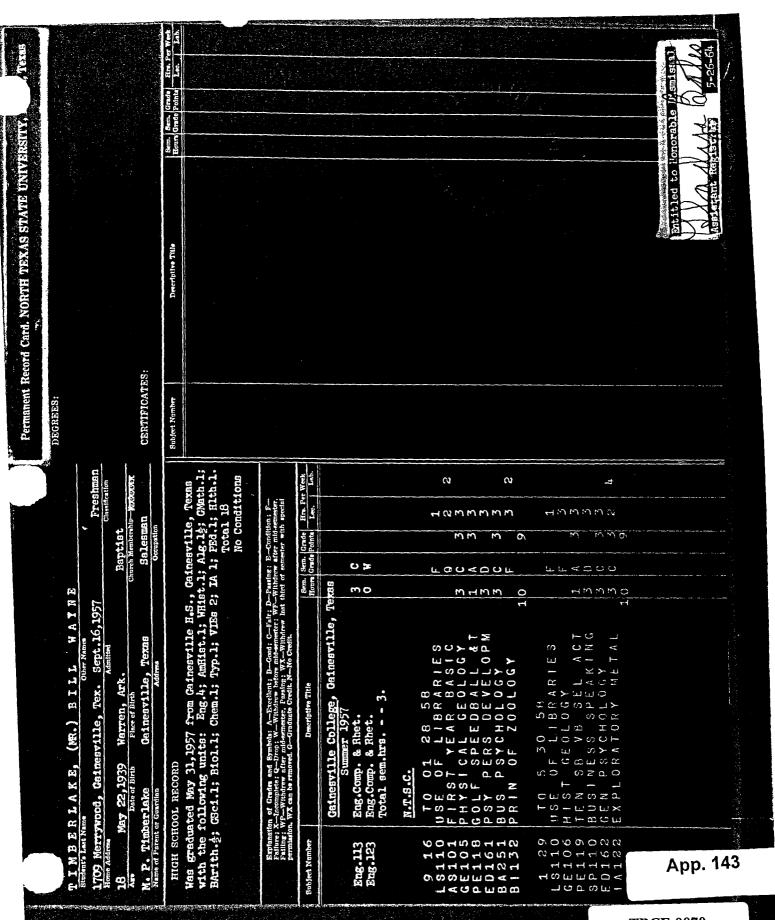
I certify that all of the information given above is to the best of my knowledge correct and this is a complete record of this student's secondary school work.

Signature of Certifying Official ...

Title Registrar

App. 142

TBCE 0068 Timberlake



Official Transcript - - Gainesville College GAINESVILLE TEXAS

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RECORD OF COLLEGE WORK

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The above is a correct record of B111 Wayne Timberlake

App. 144

who is entitled to honorable dismissal.

(SEAL)

Signature of Registrar

Dean and Registre

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TEXAS CHIROPRACTIC COLLEGE

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	Timberlake					July .	P. Leade M. C. Born	Class Hours	1		2
		, I				Date	a 1,1964	TOTAL HOURS			3

GAINESVILLE HIGH SCHOOL

OFFICE OF

J. V. CAMPBELL, PRINCIPAL GAINESVILLE, TEXAS

May 26, 1964

TO WHOM IT MAY CONCERN:

We do not keep copies of diplomas of our graduates.

This is to certify that Bill Wayne Timberlake graduated from Gainesville High School in Gainesville, Texas May 31, 1957. He was number 115 in a class of 120 students.

Sincerely,

J. N. Campbell Principal

Witnessed before me this 27th day of May, 1964.

Notary Public of

Cooke County, Texas